

AMENDED IN SENATE JULY 15, 2009
AMENDED IN SENATE JULY 9, 2009
AMENDED IN SENATE JULY 1, 2009
AMENDED IN SENATE JUNE 25, 2009
AMENDED IN SENATE JUNE 17, 2009
AMENDED IN SENATE JUNE 11, 2009
AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY MAY 14, 2009
AMENDED IN ASSEMBLY APRIL 30, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1383

Introduced by Assembly Member Jones
(Principal coauthor: Senator Alquist)
(Coauthor: Assembly Member De Leon)

February 27, 2009

An act to add and repeal Articles 5.21 (commencing with Section ~~14167.2~~ *14167.1*) and 5.22 (commencing with Section 14167.32) of, Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1383, as amended, Jones. Medi-Cal: hospitals: supplemental payments: coverage dividend fee.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. Under existing law, the Medi-Cal Hospital/Uninsured Care Demonstration Project Act, specified hospital reimbursement methodologies are applied in order to maximize the use of federal funds consistent with federal Medicaid law and stabilize the distribution of funding for hospitals that provide care to Medi-Cal beneficiaries and uninsured patients.

This bill would require the department, pursuant to additional legislation described below, to pay specified hospitals and Medi-Cal managed health care plans supplemental amounts for certain hospital services.

This bill would require the Director of Health Care Services to promptly seek the federal approvals that may be necessary to implement the above-described supplemental payment provisions.

This bill would prohibit supplemental payments for some or all of the 2008–09 federal fiscal year until the director executes a declaration, which shall be submitted to the Legislature, containing statements relating to the impact this bill’s provisions will have on other Medi-Cal reimbursement methodologies. *This bill would also provide that no supplemental payment described above shall be made until all necessary federal approvals for the payment and the fee provisions described below have been obtained and the fee has been imposed and collected.*

This bill would provide for the imposition, pursuant to additional legislation described below, and as a condition of receiving state funds, of a coverage dividend fee on certain hospitals through, and including, December 31, 2010, as specified. This bill would require the director to seek federal approval of the fee. The bill would provide that no hospital shall be required to pay the coverage dividend fee to the department until the state receives and maintains federal approval of the fee and the above-described supplemental payments from the federal Centers for Medicare and Medicaid Services.

This bill would provide that the funds collected from the coverage dividend fee, and any matching federal funds, shall only be used for certain purposes, including providing the above-described supplemental payments and health care coverage for children.

This bill would require the director to negotiate the federal approvals required to implement the bill’s provisions for the 2009–10 and 2010–11 federal fiscal years concurrently with the negotiation of a federal waiver that will replace the current Medi-Cal Hospital/Uninsured Care

Demonstration Project, *as defined*. The bill would provide that its provisions shall not be implemented until the federal government approves a federal waiver for a demonstration that will replace the current Medi-Cal Hospital/Uninsured Care Demonstration Project ~~and is not adversely impacted by the bill's provisions.~~

This bill would provide that its provisions shall become inoperative if the federal Centers for Medicare and Medicaid Services deny approval for, or do not approve before January 1, 2012, the implementation of the supplemental payment or the coverage dividend fee.

This bill provides that it is the intent of the Legislature to enact additional *urgency* legislation that will specify more precisely the calculation of the supplemental payment to individual hospitals and the amount of the coverage dividend fee due from individual hospitals. The bill would provide that the additional *urgency* legislation shall provide for imposition and for the calculations in a manner in accordance with a fee assessment. The bill provides that no supplemental payment shall be paid or coverage dividend fee made due or payable until the additional *urgency* legislation has been enacted. If the additional *urgency* legislation is not enacted, and does not become effective, by October 1, 2009, the bill would provide that its provisions shall be repealed on October 1, 2009, but if the additional *urgency* legislation is enacted, and becomes effective, by October 1, 2009, the bill would provide that its provisions shall be repealed on January 1, 2013.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 5.21 (commencing with Section ~~14167.2~~)
2 *14167.1*) is added to Chapter 7 of Part 3 of Division 9 of the
3 Welfare and Institutions Code, to read:
4
5 Article 5.21. Medi-Cal Hospital Provider Rate Stabilization
6 Act
7
8 *14167.1. (a) "Current Section 1115 Waiver" means*
9 *California's Medi-Cal Hospital/Uninsured Care Section 1115*
10 *Waiver Demonstration in effect on the effective date of this article.*

1 (b) “Designated public hospital” shall have the meaning set
2 forth in subdivision (d) of Section 14166.1.

3 (c) “Federal upper payment limit” means the upper payment
4 limit on the applicable category of hospitals pursuant to federal
5 law that will be allowed for purposes of federal financial
6 participation. The federal upper payment limit for hospital
7 outpatient services is as set forth in Section 447.321 of Title 42 of
8 the Code of Federal Regulations. The federal upper payment limit
9 for hospital inpatient services is as set forth in Section 447.272 of
10 Title 42 of the Code of Federal Regulations.

11 (d) “Nondesignated public hospital” means a public hospital
12 that is licensed pursuant to subdivision (a) of Section 1250 of the
13 Health and Safety Code, is not designated as a specialty hospital
14 in the hospital’s annual financial disclosure report for the
15 hospital’s latest fiscal year ending in 2008, and is defined in
16 paragraph (25) of subdivision (a) of Section 14105.98, excluding
17 designated public hospitals.

18 (e) “Private hospital” means a hospital that is licensed pursuant
19 to subdivision (a) of Section 1250 of the Health and Safety Code,
20 is not designated as a specialty hospital in the hospital’s annual
21 financial disclosure report for the hospital’s latest fiscal year
22 ending in 2008, and is a nonpublic hospital, nonpublic-converted
23 hospital, or converted hospital as those terms are defined
24 respectively, in paragraphs (26) to (28), inclusive, of subdivision
25 (a) of Section 14105.98.

26 14167.2. (a) All Medi-Cal payments—~~plus, including~~
27 supplemental payments made pursuant to this article for hospital
28 outpatient services furnished by private hospitals and hospital
29 inpatient services furnished by private hospitals and nondesignated
30 public hospitals—~~shall equal the federal upper payment limit for~~
31 ~~that portion of the hospitals, shall equal the portion of the~~
32 ~~applicable federal upper payment limit or limits reasonably~~
33 ~~allocable to the specific category of hospitals or services for that~~
34 ~~portion of the 2008–09, 2009–10, and 2010–11 federal fiscal years~~
35 ~~for which federal approval of the supplemental payments described~~
36 ~~in this article is obtained. Hospitals shall, pursuant to additional~~
37 ~~urgency legislation described in Sections 14167.4 and 14167.38,~~
38 ~~receive supplemental payments funded by the coverage dividend~~
39 ~~fee set forth in Article 5.22 (commencing with Section 14167.32)~~

1 and available matching federal funds to comply with this
2 subdivision.

3 (b) Designated public hospitals shall, pursuant to additional
4 *urgency* legislation described in Sections 14167.4 and 14167.38,
5 be paid direct grants in support of health care expenditures, which
6 shall be funded by the coverage dividend fee set forth in Article
7 5.22 (commencing with Section 14167.32). The aggregate amount
8 of the grants shall be the total amount of payments that would be
9 made to designated public hospitals if the nonfederal component
10 of payments up to the applicable federal upper payment limit and
11 of payments up to the portion of the applicable federal upper
12 payment limit reasonably allocable to the specific category of
13 hospitals and services and the payments received by those hospitals
14 under subdivision (c) was funded by the coverage dividend fee set
15 forth in Article 5.22 (commencing with Section 14167.32), less
16 the amount of those fees that would have been paid by the
17 designated public hospitals if the hospitals were required to pay
18 the fee.

19 (c) Medi-Cal managed care health plans shall, pursuant to
20 additional *urgency* legislation described in Sections 14167.4 and
21 14167.38, receive supplemental payments to the extent available
22 from the funds generated by the coverage dividend fee, including
23 ~~matching federal funds related federal reimbursement~~. The
24 Medi-Cal managed care health plans shall pay all of the
25 supplemental payments to hospitals in the form of increased
26 payments for hospital services.

27 (d) *No payment shall be made under this article until all*
28 *necessary federal approvals for the payment and for the fee*
29 *provisions in Article 5.22 (commencing with Section 14167.32)*
30 *have been obtained and the fee has been imposed and collected.*
31 *Payments under this article shall be made only to the extent that*
32 *the fee established in Article 5.22 (commencing with Section*
33 *14167.32) is collected and available to support the payments and*
34 *additional urgency legislation described in Section 14167.4 has*
35 *been enacted.*

36 14167.3. (a) The director shall do all of the following:

37 (1) Submit any Medicaid state plan amendment that may be
38 necessary to implement this article.

1 (2) Seek federal approval for the use of the entire federal upper
2 payment limit *for the 2008–09 federal fiscal year and for the period*
3 *beginning October 1, 2009, and ending December 31, 2010.*

4 (3) Seek all federal approvals, waivers, waiver modifications,
5 and any other federal action as may be necessary to implement
6 and obtain federal financial participation to the maximum extent
7 possible.

8 (b) Supplemental payments for some or all of the 2008–09
9 federal fiscal year shall not be made until the director executes a
10 declaration, which shall be submitted to the Legislature, that
11 contains the following statements:

12 (1) Based on assurances from the Secretary of the United States
13 Department of Health and Human Services, the maximum federal
14 funds available annually pursuant to the Special Terms and
15 Conditions, as amended October 5, 2007, of ~~California's Medi-Cal~~
16 ~~Hospital/Uninsured Care Section 1115 Waiver Demonstration, the~~
17 *Current Section 1115 Waiver*, shall not be reduced.

18 (2) Taking into account all relevant information available from
19 the federal government, there is no reasonable basis on which to
20 conclude that implementation of this article will adversely impact
21 funding that otherwise would be available for Medi-Cal and
22 uninsured services pursuant to the Medicaid state plan or waiver
23 ~~that will replace California's Medi-Cal Hospital/Uninsured Care~~
24 ~~Section 1115 Waiver Demonstration in effect on the effective date~~
25 ~~of this article; that will replace the Current Section 1115 Waiver.~~

26 (c) (1) The director shall negotiate the federal approvals
27 required to implement this article and Article 5.22 (commencing
28 with Section 14167.32) for the 2009–10 and 2010–11 federal fiscal
29 years concurrently with the negotiation of a federal waiver ~~that~~
30 ~~will replace California's Medi-Cal Hospital/Uninsured Care Section~~
31 ~~1115 Waiver Demonstration in effect on the effective date of this~~
32 ~~article; will replace the Current Section 1115 Waiver.~~

33 (2) *In negotiating the terms of the replacement federal waiver*
34 *under Section 1115 of the federal Social Security Act (42 U.S.C.*
35 *Sec. 1315), the department shall explore opportunities for reform*
36 *of the Medi-Cal program. Subject to subsequent legislative*
37 *approval, the department shall explore program reforms, which*
38 *may include, but need not be limited to, strategies to accomplish*
39 *the following goals:*

1 (A) *Payment system reforms for hospital inpatient and outpatient*
2 *care, including incentive-based payments, patient safety protocols,*
3 *and quality measurement.*

4 (B) *Improvements in the coordination of care for children,*
5 *seniors, and adults with multiple chronic and complex medical*
6 *conditions, to reduce the high-cost use of emergency and inpatient*
7 *hospital services, including reimbursement for medical homes,*
8 *enhanced access to primary and preventive care services, disease*
9 *management, and case management programs.*

10 (C) *Improvements in managed care delivery systems, including*
11 *the measurement of health plan performance and*
12 *pay-for-performance payment methodologies.*

13 ~~(2)~~

14 (3) This article and Article 5.22 (commencing with Section
15 14167.32) shall not be implemented until the federal government
16 approves a federal waiver for a demonstration that will replace
17 ~~California's Medi-Cal Hospital/Uninsured Care Section 1115~~
18 ~~Waiver Demonstration in effect on the effective date of this article.~~
19 *the Current Section 1115 Waiver.*

20 (d) This article shall become inoperative if the federal Centers
21 for Medicare and Medicaid Services denies approval for, or does
22 not approve before January 1, 2012, the implementation of this
23 article or Article 5.22 (commencing with Section 14167.32).

24 (e) *No payment shall be made under this article until all*
25 *necessary federal approvals for the payment and for the fee*
26 *provisions in Article 5.22 (commencing with Section 14167.32)*
27 *have been obtained and the fee has been imposed and collected.*
28 *Payments under this article shall be made only to the extent that*
29 *the fee established in Article 5.22 (commencing with Section*
30 *14167.32) is collected and available to support the payments and*
31 *additional urgency legislation described in Section 14167.4 has*
32 *been enacted.*

33 14167.4. (a) It is the intent of the Legislature to enact
34 additional *urgency* legislation that will specify more precisely the
35 calculation of the supplemental payments to hospitals and to
36 Medi-Cal managed care health plans under this article. The
37 additional *urgency* legislation shall provide for the calculation of
38 the amount of the supplemental payment to hospitals and Medi-Cal
39 managed care health plans in a manner that is consistent with the

1 coverage dividend fee described in Article 5.22 (commencing with
2 Section 14167.32) being a fee assessment.

3 (b) No supplemental payments shall be made pursuant to this
4 article until the *urgency* legislation described in subdivision (a)
5 has been enacted.

6 14167.5. (a) If the *urgency* legislation described in subdivision
7 (a) of Section 14167.4 is not enacted, and does not become
8 effective, by October 1, 2009, this article shall remain in effect
9 only until October 1, 2009, and as of that date is repealed.

10 (b) If the *urgency* legislation described in subdivision (a) of
11 Section 14167.4 is enacted, and becomes effective, by October 1,
12 2009, this article shall remain in effect only until January 1, 2013,
13 and as of that date is repealed.

14 SEC. 2. Article 5.22 (commencing with Section 14167.32) is
15 added to Chapter 7 of Part 3 of Division 9 of the Welfare and
16 Institutions Code, to read:

17
18 Article 5.22. Hospital Coverage Dividend Fee Act
19

20 14167.32. (a) There shall be imposed, pursuant to additional
21 *urgency* legislation described in Sections 14167.4 and 14167.38,
22 a coverage dividend fee that is consistent with the principle of
23 shared benefit and shared responsibility.

24 (b) The coverage dividend fee shall, as a condition of receipt
25 of state funds, be assessed, pursuant to additional *urgency*
26 legislation described in Sections 14167.4 and 14167.38, on
27 hospitals licensed pursuant to subdivision (a) of Section 1250 of
28 the Health and Safety Code, except for public hospitals, as defined
29 in paragraph (25) of subdivision (a) of Section 14105.98, and
30 hospitals that are designated as specialty hospitals in the hospital's
31 annual financial disclosure reports for the hospital's latest fiscal
32 year ending in 2008, through, and including, December 31, 2010.

33 (c) The director shall seek, in a timely manner, any and all
34 federal approvals that may be necessary for the implementation
35 of each element of this article.

36 (d) This article shall become inoperative if the federal Centers
37 for Medicare and Medicaid Services denies approval for, or does
38 not approve before January 1, 2012, the implementation of Article
39 5.21 (commencing with Section ~~14167.2~~ 14167.1) or this article.

(e) No hospital shall be required to pay the coverage dividend fee to the department until the state receives and maintains federal approval of the coverage dividend fee and Article 5.21 (commencing with Section ~~14167.2~~ 14167.1) from the federal Centers for Medicare and Medicaid Services for the period for which the coverage dividend fee is assessed.

14167.35. (a) The funds collected from the fees assessed pursuant to this article, and any matching federal funds, shall be available only for the following purposes:

(1) To provide supplemental payments and grants to hospitals under subdivisions (a) and (b) of Section 14167.2.

(2) To provide supplemental payments to Medi-Cal managed care health plans under subdivision (c) of Section 14167.2.

(3) To pay for health care coverage for children.

(4) To pay for the department's staffing *and administrative* costs directly attributable to implementing Article 5.21 (commencing with Section ~~14167.2~~ 14167.1) or this article.

(b) The amount of the coverage dividend fee that shall be used for health care coverage for children shall be eighty million dollars (\$80,000,000) for each quarter during the federal fiscal year that begins after the actual date on which all federal approvals are obtained that are necessary to implement Article 5.21 (commencing with Section ~~14167.2~~ 14167.1) and this article.

14167.38. (a) It is the intent of the Legislature to enact additional *urgency* legislation that will specify more precisely the calculation of the amount of the coverage dividend fee due from individual hospitals under this article. The additional *urgency* legislation shall provide for the ~~imposition~~, *after imposition of* the coverage dividend fee, and *shall provide for that imposition, and* for the calculation of the amount of the coverage dividend fee assessed on each hospital, in a manner in accordance with a fee assessment.

(b) No coverage dividend fee shall be made due or payable pursuant to this article until the *urgency* legislation described in subdivision (a) has been enacted.

14167.39. (a) If the *urgency* legislation described in subdivision (a) of Section 14167.38 is not enacted, and does not become effective, by October 1, 2009, this article shall remain in effect only until October 1, 2009, and as of that date is repealed.

1 (b) If the *urgency* legislation described in subdivision (a) of
2 Section 14167.38 is enacted, and becomes effective, by October
3 1, 2009, this article shall remain in effect only until January 1,
4 2013, and as of that date is repealed.

5 SEC. 3. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to make the necessary statutory changes to increase
10 Medi-Cal payments to hospitals and improve access, at the earliest
11 possible time, so as to allow this act to be operative as soon as
12 approval from the federal Centers for Medicare and Medicaid
13 Services is obtained by the State Department of Health Care
14 Services, it is necessary that this act take effect immediately.